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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 1031

R. W. BROOKS ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND C. A. FIRTH

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court did not deliver an opinion. The opinion of the Circuit Court of Appeals (R. 290–318) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on March 10, 1941 (R. 318). The petition for a writ of certiorari was filed on May 7, 1941. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The federal District Court for the District of Arizona entered a decree in 1935, in an action brought by the United States against both Arizona and New Mexico landowners, determining the rights of all the parties to the action to the waters of the Gila River in Arizona and New Mexico and enjoining the New Mexico water users from encroaching on the rights of the United States and of the other Arizona water users. The New Mexico defendants to that action appeared generally and asked for cross relief. Petitioners in the present action were adjudicated guilty of contempt of court for violation of the 1935 decree. The principal questions are:

1. Whether the decree entered by the District Court in 1935 was void for want of jurisdiction.

2. Whether petitioners, who were parties to the action in which the decree was entered, have standing to contend that the decree is not binding on successors in interest to the other New Mexico defendants to that action; and, if they have such standing, whether the decree is binding on such successors in interest.

STATEMENT

Petitioners were adjudicated guilty of contempt of court by reason of having violated an injunction entered in 1935 by the United States District Court for the District of Arizona, affecting and defining the water rights of the United States and

of the several defendants in the waters of the Gila River in Arizona and New Mexico. The facts, as found by the District Court (R. 130–142),[1] and as shown by the record, may be summarized as follows:

In 1925, the United States, on behalf of itself and of the Pima and Apache Indians, brought suit in the federal District Court for the District of Arizona, to have its priority rights in the waters of the Gila River judicially ascertained and protected (R. 3–25). The Gila River rises in New Mexico and flows west through Arizona to its junction with the Colorado River at Yuma, Arizona (R. 290). The United States named as defendants to its suit some 2,000 persons, individual and corporate, including the petitioners in this case, who claimed rights in the waters of the river (R. 3–4). Seventy-five of the defendants resided in New Mexico (R. 47–48). The relief requested was that the rights of the parties to the waters of the river and of its tributaries be determined, that the title of the United States to the water rights claimed by it for use on lands in Arizona be quieted, and that the defendants be enjoined from interfering with those water rights (R. 25).

All of the defendants, those in New Mexico as well as those in Arizona, entered a general appearance, answered the Government's complaint, and by way of cross-relief asked that their rights be ascertained as against the United States and as

[1] Unless otherwise indicated, the record references are to Volume I of the printed record.

among themselves (R. 26–44). In 1935, after ten years of protracted investigations and hearings, the parties "adjusted and settled their respective claims as between each other", signed a "stipulation for and consent to the entry of a final decree," and asked the court to adopt as its findings and to enter as its decree the stipulation which set forth "the respective rights of all parties" (R. II, p. 1 following decree). The court, pursuant to this stipulation, entered its decree on June 29, 1935, and retained jurisdiction to enforce and implement the provisions thereof (R. II, 112, 113).

The decree describes in detail the nature and extent of the rights of each party (R. II, 12–105); provides for the appointment of a water commissioner to carry out and enforce its provisions, with power to cut off water from the ditches of persons who disobey his orders; requires each diverter to install and maintain measuring and locking devices (Art. XII, R. II, 112); enjoins all parties, their assigns, successors in interest, agents, etc., from asserting or claiming, as against the parties, any right, title or interest, except the rights determined and allowed in the decree; perpetually enjoins each from diverting, taking, or interfering with the waters of the river so as to prevent or interfere with the diversion or use by other parties as provided in the decree; and provides that the decree shall inure to the benefit of grantees, assigns, and successors in interest of the owners of rights and the parties to the decree (Art. XIII, R. II, 113).

After the entry of the decree, the court appointed respondent C. A. Firth as Water Commissioner and, on December 9, 1935, directed that an annual assessment of 13¢ per acre be collected from each water user to meet the expenses of administering the decree (R. 58), and that headgates with adequate locking facilities and accurate measuring and automatic recording devices be installed (R. 59).

In the fall of 1938, certain water users in New Mexico, and particularly the officers of the Sunset Canal Company,[2] became dissatisfied with the 1935 decree and appealed to the Interstate Stream Commission of New Mexico for relief from its provisions (R. 223–225). That Commission, after an *ex parte* investigation, decided that the decree was inequitable and void, and instructed the New Mexico State Engineer to take over the administration of the waters of the Gila River (R. 95–97). Acting pursuant to these instructions and asserting that the Arizona court had lacked jurisdiction to enter the 1935 decree, the state engineer purported to establish a water district and appointed a water master to supervise the distribution of the waters of the Gila River among water users in New Mexico (R. 92–93).

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[2] Approximately 95% of the water diverted from the Gila River and used on lands of the New Mexico defendants to the original action passes through the ditches of the Sunset Canal Company. Petitioners without exception are supplied by this particular company, which does business in both New Mexico and Arizona (R. 143).

The Sunset Canal Company thereupon refused to pay the 13¢ assessment for the coming year (R. 140). Being in default and his demand having been refused, Water Commissioner Firth, on January 1, 1939, locked the headgates of the Sunset Canal Company and refused to deliver any water until the assessments were paid (R. 140). Three days later the state police cut off the locks and opened the headgates (R. 141, 218). Thereafter the waters were diverted and used by petitioners without regard for the 1935 decree (R. 141–142, 215).

It having become apparent that the New Mexico water users no longer intended to abide by the 1935 decree, Water Commissioner Firth and the United States Attorney for the District of Arizona asked the court below to issue a rule directing the present petitioners and certain other New Mexico water users, who were parties to the 1935 decree, to show cause why they should not be adjudged in contempt of court (R. 46–62). The rule was issued (R. 64), responses were filed (R. 77, 99) and evidence was taken (R. 167–278). On February 6, 1940, the District Court found that the petitioners had violated the terms of the decree and orders of the court and that they were in contempt (R. 108–109). On March 11, 1940, a judgment was entered adjudging the Sunset Canal Company and the present petitioners guilty of contempt and fining each of them $100 (R. 145–146). The court below affirmed (R. 318).

ARGUMENT

1. The principal question which petitioners seek to have this Court review is whether the federal District Court for the District of Arizona had jurisdiction to enjoin the New Mexico defendants to the original action, over whom the court had personal jurisdiction, from so diverting the waters of the Gila River as to encroach upon the water rights of the other parties to the action within Arizona. Petitioners contend (Pet. 6–12) that the court had no such jurisdiction and that the decree which it granted in 1935 was therefore void.

This contention is completely foreclosed by the decision of this Court in *Rickey Land & Cattle Co.* v. *Miller & Lux,* 218 U. S. 258.[3] There this Court held that a court within a downstream state may restrain upstream appropriators within another state, over whom the court has personal jurisdiction, from taking water in excess of their lawful rights, when necessary to protect diversion and storage rights within the downstream state. That decision, as the court below pointed out (R. 293–298), is fully applicable to the situation here presented.

The assertion of conflict between the decision in this case and the decision of the Circuit Court

[3] See also *Vineyard Land & Stock Co.* v. *Twin Falls S. R. L. & W. Co.*, 245 Fed. 9 (C. C. A. 9); *United States* v. *Walker River Irr. Dist.*, 11 F. Supp. 158, 168–170 (D. Nev.); *Willey* v. *Decker*, 11 Wyo. 496, 73 Pac. 210; *Taylor* v. *Hulett*, 15 Idaho 265, 97 Pac. 37.

of Appeals for the Tenth Circuit in *Albion-Idaho Land Co.* v. *Naf Irr. Co.*, 97 F. (2d) 439, is without substantial foundation. The relationship between the two cases is fully discussed in the opinion below (R. 302–305). As is there pointed out, the trial court, whose action was approved on appeal in the *Albion-Idaho* case, undertook to exercise jurisdiction over the whole of an interstate stream and to regulate the rights of water users in two different states, in very much the same manner as was done by the District Court's decree attacked in the present case. Although the opinion in the *Albion-Idaho* case does contain some dicta which would seem to be at variance with the decision of this Court in the *Miller & Lux* case,[4] the court purported to, and actually did, follow the *Miller & Lux* decision. Certainly the inclusion in the *Albion-Idaho* opinion of apparently inconsistent dicta is no reason for the grant of certiorari here, where the principles announced in the *Miller & Lux* case have been correctly applied.

2. The federal court in Arizona also had jurisdiction, in order to protect direct diversion and storage rights of water users in Arizona, to require locks and measuring devices to be installed in New

[4] It is apparent from the record and briefs in the *Albion-Idaho* case that the statement quoted by petitioner (Pet. 7) concerning the invalidity of the "Hart decree" is dictum, because neither side sought to have that decree enforced. Appellants merely asked to have the decree considered for its evidentiary value.

Mexico and to appoint a water commissioner to see that the decree was properly administered. The authorities are agreed that an equity court may command a person before it to do an act in another state, provided such act is not contrary to the law of the state in which it is to be performed. *Salton Sea Cases,* 172 Fed. 792 (C. C. A. 9), certiorari denied, 215 U. S. 603; *Vineyard Land & Stock Co.* v. *Twin Falls S. R. L. & W. Co.,* 245 Fed. 9, 27–29 (C. C. A. 9).[5]

The 1935 decree is not in conflict with the law of New Mexico. That state, it is true, has established the office of state engineer with supervisory authority over the waters of the state. But it is not his practice nor his duty to take over streams already being administered under court decrees. And, if he does, such supervision must be in accordance with "the adjudications of the courts." N. M.

[5] See also Note, 35 Harv. L. Rev. 610; Note, 20 Ill. L. Rev. 594; Messner, Jurisdiction of Equity, 14 Minn. L. Rev. 494, 517–529. The cases in point are collected in 1 Chafee and Simpson, Cases on Equity (1934), pp. 208, 210; Note, 17 Harv. L. Rev. 572; Note, 23 Harv. L. Rev. 390; Note, 5 Ill. L. Rev. 442; Note, 31 Harv. L. Rev. 646; Note, 27 Yale L. J. 946; Note, 6 Cornell L. Q. 423; Note, 30 Yale L. J. 865; Note, 71 A. L. R. 1351. The American Law Institute in its Conflict of Laws Restatement (1934) states the rule in this fashion: "§ 94. A state can exercise jurisdiction through its courts to make a decree directing a party subject to the jurisdiction of the court to do an act in another state, provided such act is not contrary to the law of the state in which it is to be performed." *Carpenter* v. *Strange,* 141 U. S. 87, relied on by petitioners (Pet. 10–11), stands for no contrary doctrine.

Stat. Ann. (Comp. 1929), sec. 151. In all their acts to date the New Mexico officials have been careful to state that the contemplated action was being taken because they believed the Arizona decree to be invalid (R. 231, 238–239). Once the validity of that decree is sustained, it is to be presumed that they will respect its provisions.

3. Petitioners assert (Pet. 9–10) that the 1935 decree is invalid because it attempts to bind successors in interest in New Mexico. Since the present petitioners were parties to the original decree, they are in no position to raise this question and cannot absolve themselves of their contumacious conduct by asserting that the decree is not binding on successors in interest. In any event, the contention is unsound. An injunction is effective not only against a party defendant but also against a successor in interest who has notice of its provisions. *In re Lennon,* 166 U. S. 548, 554; *Ahlers* v. *Thomas,* 24 Nev. 407, 56 Pac. 93. If a purchaser of water rights in an upstream state is bound to take notice of a water suit pending in a downstream state (see *Rickey Land & Cattle Co.* v. *Miller & Lux,* 218 U. S. 258, 262–263), then a *fortiori* a New Mexico successor in interest is required to take notice of a previous Arizona decree enjoining his grantor from impinging upon the rights of downstream appropriators in Arizona. *Pacific Live Stock Co.* v. *Rickey,* 8 F. Supp. 772 (D. Nev.). A contrary ruling would largely nullify the for-

ward step which this Court took in adapting legal theories to realities in the *Miller & Lux* case.

Furthermore, whatever be the effect of an injunction on successors in interest, it is plain that in this case all New Mexico water users, whether parties to the original suit or not, who receive water from the canals of the Sunset Canal Company, as these petitioners do, are bound by the provisions of the 1935 decree against the Sunset Canal Company. This follows from the fact that a canal or ditch company can sue or be sued on behalf of its water users, and the latter will be bound by the ensuing judgment, even though they were not parties to the suit. *Montezuma Canal* v. *Smithville Canal,* 218 U. S. 371, 382; *La Luz Com. Ditch Co.* v. *Town of Alamogordo,* 34 N. Mex. 127, 134–135, 279 Pac. 72; *Riverside Water Co.* v. *Sargent,* 112 Cal. 230, 235, 44 Pac. 560.[6]

[6] Petitioners cannot escape this principle by the plea that the Sunset Canal Company ceased to exist in 1921 (Pet. 12–13). That contention is without merit. The Sunset Canal Company is an existing corporation. It was organized in 1903 (R. 241); it has since transacted business, and continues to transact business, as a corporation (R. 131, 143). Since it is a "quasi public" rather than a "private" corporation (see *Albuquerque Land and Irrigation Co.* v. *Gutierrez,* 10 N. Mex. 177, 250, affirmed, 188 U. S. 545), and since it was not organized for profit, it was not required to file annual reports under the Act of March 15, 1917 (New Mexico Laws, 1917, c. 112, sec. 6), and consequently was not affected by the 1921 statute dissolving all "private corporations" which had failed to file annual reports. Act of June 14, 1921, New Mexico Laws, 1921, c. 185. Furthermore, because of their conduct during the litigation (R. 39) and since the decree

4. The various other contentions advanced in the petition for certiorari are fully answered in the opinion of the court below, and no useful purpose would be served by repeating that discussion here. Suffice it to say that none of these contentions raises a question warranting review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1941.

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was entered (R. 132, 138–139, 194–197, 200), petitioners are estopped to deny the corporate existence of Sunset Canal Company. *Tulare Irrigation District* v. *Shepard*, 185 U. S. 1.

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